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FILED

NOV 17 1995

HOWARD HANSON
MARIN COUNTY CLERK

By J. NAUE Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit religious corporation,))

Plaintiff,))

vs.))

GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION,))
a California for-profit))
corporation; DOES 1 through 100,))
inclusive,))

Defendants.))

No. 157 680

ARMSTRONG'S
OPPOSITION TO MOTION FOR
SUMMARY ADJUDICATION ON
FIRST CAUSE OF ACTION OF
ARMSTRONG'S FIRST AMENDED
CROSS-COMPLAINT POINTS AND
AUTHORITIES; REQUEST FOR
JUDICIAL NOTICE

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1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

2 I. INTRODUCTION

3 Summary adjudication of Armstrong's cross-complaint for declaratory relief is inappropriate because
4 cross-defendants fail to address whether the settlement agreement violates Armstrong's right under the Speech
5 and Religion Clauses of the First Amendment. The Court has not ruled on Armstrong's defense based on First
6 Amendment religious liberty principles. Since that is ignored by Scientology, summary adjudication cannot be
7 granted. (C.C.P. § 437c (o)(2).) As a substantive matter, the settlement agreement violates public policy and
8 the First Amendment.

9 The specific allegations of the cross-complaint for declaratory relief state as follows:

10 59. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive,
11 and incorporates them by reference herein as though fully set forth.

12 60. An actual controversy has arisen and now exists between ARMSTRONG and
13 CSI concerning their respective rights and duties in that ARMSTRONG contends that the only
14 provisions of the settlement agreement that have any legal force or effect were those
15 whereby he dismissed his cross-complaint in Armstrong I in consideration for a sum of money,
16 and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement are
17 void as against public policy and should be severed therefrom, and that CSI and its agents are
18 not entitled to breach the settlement agreement while requiring ARMSTRONG to adhere
19 thereto, whereas CSI disputes this contention and contends that it is entitled to enforce all
20 provisions of the settlement agreement against ARMSTRONG notwithstanding the lack of
21 mutuality thereof.

22 61. ARMSTRONG desires a judicial determination of his rights and duties, and a
23 declaration that the only provisions of the settlement agreement which are valid are those
24 which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration
25 for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D,
26 18E of the settlement agreement should be severed and held not to be legally enforceable
27 because they were designed to suppress evidence and obstruct justice.

28 62. A judicial declaration is necessary and appropriate at this time under the
circumstances in order that ARMSTRONG may ascertain his rights and duties under the
settlement agreement.

63. ARMSTRONG is being harmed by the settlement agreement insofar as his First
Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted,
and his reputation is being attacked in judicial proceedings which he is unable to counter
without risking violation of the settlement agreement.

(Scientology's Request for Judicial Notice, (G).)

1 **II. STATEMENT OF FACTS**

2 In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr.,
3 specifically found the Scientology organization to be malevolent, in part because the organization "or its
4 minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological
5 abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6.)¹ He further
6 provided the following factual findings, inter alia, regarding Scientology:

7 In 1970 a police agency of the French Government conducted an investigation into Scientology and
8 concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to
9 extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of)
10 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to
11 detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a
12 kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted]
13 From the evidence presented to this court in 1984, at the very least, similar conclusions can be
14 drawn.

15 In addition to violating and abusing its own members civil rights, the organization over the years with
16 its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives
17 as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination
18 seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has
19 been virtually a pathological liar when it comes to his history, background, and achievements. The
20 writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power,
21 and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

22 *Id.* at 8:7-9:4. (Emphasis added.)

23 In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his
24 witnesses to be credible and sympathetic. He wrote:

25 As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn
26 Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and
27 Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification
28 established and corroborated by this evidence . . . In all critical and important matters, their testimony
was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all
of whom were intimately involved [with the highest echelons of power in] the Scientology
Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally
gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas.
Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

25 ¹ Rather than unnecessarily burden the Court's file with repetitive filings, the evidence
26 referred to in Armstrong's Separate Statement herein will not be refiled. Rather, Armstrong relies on
27 the evidence that he submitted in opposition to Scientology's motion for summary adjudication of
28 the twentieth causes of action. There is additional evidence with respect to Scientology's so-called
"Upper Level" materials referred to in Armstrong's Separate Statement herein that the Court
previously struck as irrelevant. Due to the Court having previously ordered said material stricken, it
is submitted again with this opposition.

1 Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalci
2 (now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it
3 becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had
4 rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as
5 witnesses in future litigation. The nature of the settlement agreement is further clarified by looking at its
6 requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's
7 opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States*
8 *v. Zolin*,² and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at
9 ¶ 7H.)

10 Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the
11 videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a
12

13 ² *United States v. Zolin*, then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central
14 District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth
15 Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in
16 *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

17 *Zolin* arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by
18 Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the
19 course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape
20 recordings, that had been filed under seal in *Armstrong I*. *Id.* 105 L.Ed.2d at 481. Scientology sought to
21 block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for
22 injunctive relief obtained in the United States District Court for the Central District of California. Citing the
23 crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On
24 appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed
25 whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on
26 the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan
27 to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin*, the Supreme Court reversed the Ninth
28 Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a
sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology]
officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding,
the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the
IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the
privilege applied. On remand, the Ninth Circuit held:

The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege.

United States v. Zolin (1990) 905 F.2d 1344, 1345 (emphasis added.).

Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in *Zolin*, the Scientology Organization required Armstrong to "assist [the Scientology Organization] in recovering these documents as quickly as possible, including but not limited to these tapes."

1 deposition subpoena served on Gerald Armstrong (that was based on the agreement) that he "was personally
2 involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of
3 the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement at ¶ 101)
4 He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties
5 involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences
6 with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those
7 staff members or parishioners." (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989,
8 Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

9 Scientology repeatedly made disparaging and slanderous comment about Armstrong after the
10 settlement agreement. (*Id.* At ¶ 105)

11 Armstrong is a Christianist who believes in God and in Jesus and in the Bible. (*Id.* at ¶ 147, 157, 159)

12 Although Scientology pays lip service to being compatible with Christianist teachings, (*Id.* at ¶¶ 160-
13 161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated Scientologist believes that
14 "Christ, God and Heaven are false ideas 'implanted' in humans by electronic means to enslave them." (*Id.* At
15 ¶ 163) Scientology secretly teaches its adherents that its "auditing" procedures are the only way to free
16 mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶ 164.) Scientology enforces
17 acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system
18 of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Any
19 person in Scientology who professed a belief in Christ, or God, or who sought help through prayer, was
20 viewed and handled as a "psychotic." (*Id.* At ¶ 166) As a Christianist, Armstrong believes that this
21 "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.) There are others who share
22 Armstrong's beliefs. (*Id.* at ¶ 169-172.)

23 **III. THE HELLER DECLARATION RAISES TRIABLE ISSUES AS TO WHETHER THE**
24 **AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT**
25 **THAT THE GAG PROVISIONS WERE RECIPROCAL**

26 "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a
27 written instrument is not whether it appears to the court to be plain and unambiguous on its face, but
28 whether the offered evidence is relevant to prove a meaning to which the language of the contract is
reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a
contract appears to be absolutely clear on its face, the court is required to engage in preliminary
consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic
evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic

1 evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an
2 alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient
to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

3 *Barris Industries, Inc. v. Worldvision Enterprises, Inc.* (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v.*
4 *G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.*
5 (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934,
6 § 983-986.

7 In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain
8 reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to
9 Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶
10 105) ³

11 Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain
12 mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat
13 summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917;
14 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

15 Most importantly, Heller's contradictory statements also implicate important public policy
16 considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the
17 Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil
18 compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court
19 determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to
20 maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d
21 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg*, principles
22 regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

23 The public interest exception to the presumption that requests for stipulated reversal
24 will be granted cannot be defined by formula, though it will be more likely present when the
25 judgment in question involves important public rights, unfair, illegal, or corrupt practices, or
26 torts affecting a significant number of persons. Whether a stipulated reversal would deprive
the public of an important benefit must in every case be determined "from a realistic
assessment of all the pertinent circumstances." [Citation.]" (*California Common Cause v. Duffy*
(1987) 200 Cal.App.3d 730, 745

27 ³ Among other things, after the settlement, Scientology stated that Armstrong was a perjurer,
28 contemnor, and admitted agent provacteur of the United States Government. (Separate Statement, ¶ 105 (E).

1 *Norman I. Krug Real Estate v. Praszker* (1994) 22 Cal.App.4th 1814, 821.

2 That the public has an interest in the integrity of the judicial system cannot be disputed. *River West,*
3 *Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous
4 administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted
5 judicial system."]

6 The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or
7 corrupt practices, or torts affecting a significant number of persons," but more importantly because it is one
8 component of a poly-dimensional effort by Scientology to buy its way out of accountability for the
9 consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first
10 principle that the people have the right to know what is done in their courts." *Church of Scientology v.*
11 *Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

12 Judge Breckenridge's decision was not an isolated aberration. Scientology has a long history of
13 tortious and criminal behavior. ⁴ With this judicial context, it is inconceivable that there is no question of fact
14 on the issue that Scienbtology's intention as to the settlement agreement at issue was to "buy [its] way out"
15 *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v.*
16 *Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct
17 with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game

18
19 ⁴ *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means
20 "that person" may be deprived of property or injured by any means by any Scientologist without discipline of
21 the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were
22 damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party
23 whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot
24 be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game
25 resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California*
26 (1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modren-day "Christian inquisition" intended to
27 "neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar*
28 (1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number
of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ...
The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be
enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also
acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church.'];
Church of Scientology v. Commissioner (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of
Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United
States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS
documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records.
Petitioner gave false information to and concealed relevant information from the IRS about its corporate
structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

1 Doctrine.

2 Under this view, the \$800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and
3 maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the
4 settlement. ⁵ It is a barometer of the value which Scientology placed on the suppression of Armstrong's
5 testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical
6 and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization. ⁶ For this
7 Court to participate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the
8 events set forth above "tend to undermine individual security, personal liberty, or private property, or injure
9 the public or the public good." *Church of Scientology v. Armstrong, supra.* 232 Cal.App.3d at 1068. One
10 result is that "public court business is conducted in private [and then] it becomes impossible to expose
11 corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

12 Scientology's litigation practices bring the question of judicial corruption into high relief.

13 On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc.*
14 *Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York,
15 Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the
16 following statements:

17 In reality the church is a hugely profitable global racket that survives by intimidating members
18 and critics in a Mafia-like manner."

19 "Says Cynthia Kissler, the [Cult Awareness] network's Chicago-based executive director"
20 "Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigious cult the

21 ⁵ As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep
his word for years until Scientology's betrayal of their promises became completely intolerable.

22 ⁶ The nature of Scientology continues to be judicially recognized as a live public controversy of
23 great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in
24 *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States
25 District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that
26 "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-
27 profit purposes to advance understanding of issues concerning the Church which are the subject of
28 on-going public controversy. ... [L] Defendants maintain and the evidence does not refute that the
Lerma postings to the Internet were made in the context of ongoing dialogue in the particular
newsgroup to which they were posted. [T]hey form part of the topical debate concerning whether the
Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings
may well be considered as having been made for the purposes of criticism, comment or research
falling within the fair use doctrine"
(Armstrong's Request for Judicial Notice, A.)

1 country has ever seen. No cult extracts more money from its members.”

2 “Those who criticise the church – journalists, doctors, lawyers and even judges so often find
3 themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or
4 threatened with death.”

4 (Request for Judicial Notice, B at p. 7.)

5 **IV. ARMSTRONG IS ENTITLED TO A DECLARATION**
6 **THAT THE CONTRACT VIOLATES THE FIRST AMENDMENT** ⁷

7 Armstrong's exercise of his right as an apostate to criticize his former religion while his former
8 religion not only assails his reputation and character, but also his Christianist religious beliefs is a violation of
9 the First Amendment. The contract forces Armstrong, ultimately upon penalty of imprisonment, to maintain
10 abject silence in the face of a Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such
11 violates two constitutionally essential principles regarding the speech and religion clauses of the First
12 Amendment.

13 Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent
14 core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

15 “[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think
16 are means indispensable to the discovery and spread of political truth; that without free speech and
17 assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection
18 against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people;
19 that public discussion is a political duty; and that this should be a fundamental principle of American
20 government. They recognized the risks to which all human institutions are subject. But they knew that
21 order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to
22 discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate;
23 that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely
24 supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones.
25 Believing in the power of reason as applied through public discussion, they eschewed silence coerced
26 by law - the argument of force in its worst form.”

27 Justice Cardozo referred to freedom of speech as “the matrix, the indispensable condition, of nearly
28 every other form of freedom.” *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

29 [The First] Amendment rests on the assumption that the widest possible dissemination of
30 information from diverse and antagonistic sources is essential to the welfare of the public ...

31 ⁷ Scientology's motion for summary adjudication directs itself solely to the allegations of
32 paragraph 61 of the cross-complaint. As such it omits addressing the allegations of paragraphs 60 and 63.
33 Paragraph 60 pertains the need for declaration of rights and duties on the issue of the one-sided
34 interepretation of the agreement. Paragraph 63 alleges that Armstrong's exercise of his First Amendment
35 rights are harmed by the contract. There fore summary adjudication of the cross-complaint should be denied
36 because it fails to carry its burden that one or more elements of the cause of action cannot be established or
37 that there is a complete defense to the casue of action. (C.C.P. § 437c (o)(2).)

1 *Citizen Publishing Co. v. United States* (1969) 394 U.S. 131, 139-140. The reason for protecting the free
2 flow of information is that "[o]ur system of government requires that we have faith in the ability of the
3 individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird*
4 (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

5
6 "... above all else, the First Amendment means that government has no power to restrict expression
7 because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued
8 building of our politics and culture, and to assure self-fulfillment for each individual, our people are
9 guaranteed the right to express any thought, free from government censorship. The essence of this
10 forbidden censorship is content control. Any restriction on expressive activity because of its content
11 would completely undercut the 'profound national commitment to the principle that debate on public
12 issues should be uninhibited, robust and wide-open.' [Citation.]"

13
14 *Police Department v. Mosley* (1972) 408 U.S. 92, 95-96.

15 The contract violates the public interest, and eviscerates its own ability to fulfill its purpose - the
16 ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from participating
17 in discussion of "noxious doctrine," which is "silence coerced by law - the argument of force in its worst
18 form." *Whitney*, 274 U.S. at 375-376.

19 There is a "germ of a defense" that the instant settlement agreement violates the public interest
20 because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair
21 Game Doctrine which can have a devastating impact on "important public rights, unfair, illegal, or corrupt
22 practices, or torts affecting a significant number of persons." Money, even \$800,000, cannot be allowed to
23 buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy
24 of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice
25 will have become Injustice.

26 In addition to the contract constituting a most egregious prior restraint on pure speech, the nature of
27 the speech which it impacts, is subject to additional First Amendment protection because it is of an
28 independantly religious nature.

Speech about religion is speech entitled to the general protections of the First Amendment. This
includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields
the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own
point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who
have been, or are, prominent in church or state, and even to false statement. But the people of this

1 nation have ordained in the light of history, that, in spite of the probability of excesses and abuses,
2 these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of
the citizens of a democracy.”

3 *Cantwell v. Connecticut* (1940) 310 U.S. 296, 310.

4 Armstrong believes that God has sent him to help the “little people” whom Scientology “persecutes.”
5 (Separate Statement at ¶¶ 173-175) “It is a function of speech to free men from the bondage of irrational
6 fears.” *Whitney, supra.*, 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any
7 expression of the counterbalancing Christianist view, violates Armstrong’s right to freely exercise his religion,
8 even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the
9 Fair Game Doctrine.

10 “Those who begin coercive elimination of dissent soon find themselves exterminating dissenters.
11 Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but
12 necessary to say that the First Amendment to our Constitution was designed to avoid these ends by
13 avoiding these beginnings. There is no mysticism in the American concept of the State or of the
nature or origin of its authority. We set up government by consent of the governed, and the Bill of
Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be
controlled by public opinion, not public opinion by authority.

14 *West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, 641.

15 Armstrong’s views on Scientology were sufficiently supported by evidence and conceptually powerful
16 to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong’s view
17 were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment
18 would still compel protection against the Court’s prior restraint of his speech.

19 We can have intellectual individualism and the rich cultural diversities that we owe to exceptional
20 minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless
21 to others or to the State as those we deal with here, the price is not too great. But freedom to differ is
not limited to things that do not matter much. That would be a mere shadow of freedom. The test of
its substance is the right to differ as to things that touch the heart of the existing order.

22 *Id.* At 641-642.

23 Armstrong’s position does go to the heart of the existing order because he asserts that no amount of
24 money, not even \$1 million, can buy the truth. He says the First Amendment is not for sale. ⁸

26 ⁸ The *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 case is
27 inapposite. Attorney Heller testified that both parties would maintain silence about the other. Thus there is a
28 question of fact as to whether or not Armstrong had voluntarily, knowingly and intelligently agreed that
Scientology could say whatever it wanted about him, and that if he said anything back he could be sued,
enjoined and jailed. There is no evidence that a constitutional waiver had taken place.

1 The Fourteenth Amendment supports Armstrong's position.

2 The test of legislation which collides with the Fourteenth Amendment, because it also collides with
3 the principles of the First, is much more definite than the test when only the Fourteenth is involved.
4 Much of the vagueness of the due process clause disappears when the specific prohibitions of the First
5 become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be
6 infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and
7 immediate danger to interests which the state may lawfully protect.

8 *Id.* 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no "grave and
9 immediate danger" to the State's interest. The only value which supports the injunction is the right to
10 contract. While not to be belittled, such right is also not ultimate.

11 Just because citizens contracted to purchase homes with the express covenant that said home would
12 never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer*
13 (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth
14 Amendment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the
15 Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First
16 Amendment Rights without running afoul of the First and Fourteenth Amendments.

17 All of the speech which the contract represses is religious in nature because the content of such
18 speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-
19 175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to
20 the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for
21 contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to
22 benefit the public, has obtained a court order to silence the words of a former member who warns the public
23 of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of
24 the First Amendment's establishment clause.

25 In order to pass muster under the First Amendment's establishment clause, the governmental action
26 must pass a three-pronged test.

27 "First the [governmental order] must have a secular legislative purpose; second, its principal or
28 primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not
foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria
requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its

1 authority in the domain of religious conviction. Government may not convey any message of 'endorsement
2 or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any
3 matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-
4 1162.

5 The contract fails the last two prongs of this test. The order advances Scientology's religious purpose
6 while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about
7 Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The
8 order allows Scientology to propagate its belief that God and Jesus are "implants" to enslave man, while at the
9 same time it censors Armstrong's belief that such is blasphemy.

10 Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot
11 allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail
12 him for the act of standing up and speaking his convictions, whether the court considers him to be mad or
13 not. It is inconceivable that in our democratic society the Government will enforce a religious edict by jailing
14 a citizen who dares to speak out against it.

15 **VII. SUMMARY ADJUDICATION SHOULD BE DENIED BECAUSE**
16 **THE HELLER AND LONG DECLARATIONS RAISE TRIABLE**
17 **ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS**

18 Assuming without conceding that as a matter of contractual interpretation CSI was not required to
19 maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of
20 unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked
21 when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior
22 conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation.
23 *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a
24 legal action as well as in equity *Id.* at 728.

25 Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This
26 maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of
27 a court of equity to one tainted with inequity or bad faith relative to the matter in
28 which he seeks relief, however improper may have been the behavior of the defendant. The
doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively
enforcing the requirements of conscience and good faith. This presupposes a refusal on its
part to be 'the abettor of inequity.'"

1 *Burton v. Sosinsky* (1988) 203 Cal.App.3d 562, 573-574.

2 The equitable principles underlying the clean hands doctrine do not require a finding that
3 Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or
4 illegality which will prevent a suitor from obtaining equitable relief. Any *unconscientious*
5 *conduct* upon his part which is connected with the controversy will repel him from the forum
6 whose very foundation is good conscience.

7 *Pond v. Insurance Co. of America* (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is
8 primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the
9 inequitable conduct occurred in a transaction directly related to the matter before the court and affects the
10 equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170
11 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go
12 unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

13 Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101,
14 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent
15 provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as
16 to his issue of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet
17 provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a
18 bad man.

19 **VIII. CONCLUSION**

20 Based on the foregoing points and authorities, defendant Armstrong respectfully submits that the
21 motion for summary adjudication should be denied.

22 DATED: November 17, 1995

HUB LAW OFFICES

By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S AMENDED MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
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~~BY PERSONAL SERVICE~~

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
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Suite 2000
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BY FAX

(Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

(By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 16, 1995